

Gray highlighting = Requested change from Committee

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Agriculture and Forest Products to which was referred
3 House Bill No. 35 entitled “An act relating to improving the quality of State
4 waters” respectfully reports that it has considered the same and recommends
5 that the report of the Committee on Fish, Wildlife and Water Resources be
6 amended as follows:

7 First: By striking out Sec. 1 in its entirety and inserting in lieu thereof the
8 following:

9 Sec. 1. FINDINGS AND PURPOSE; AGRICULTURAL WATER QUALITY

10 (a) Findings. The General Assembly finds that:

11 (1) The U.S. Environmental Protection Agency (EPA) has worked with
12 the State of Vermont to improve the water quality in the Lake Champlain
13 Basin and the waters of Vermont; however, insufficient progress has been
14 made.

15 (2) Vermont has recently received approximately \$60,000,000.00 from
16 federal sources to be used over the next five years. These funds are dedicated
17 to improving the water quality of the Lake Champlain Basin area.

18 (3) Although Accepted Agricultural Practices (AAPs) were adopted in
19 1995, there is a continued need for increased awareness in the small farms
20 community about the AAPs, and the Agency of Agriculture, Food and Markets

Gray highlighting = Requested change from Committee

1 should enlist partners to educate small farm operators concerning these
2 requirements.

3 (4) There are 27 Large Farm Operations (LFOs) and 139 Medium Farm
4 Operations (MFOs) that have been identified to date. Accurate data do not
5 exist to identify the number of Small Farm Operations (SFOs) in Vermont, but
6 estimates indicate approximately 6,500 SFOs exist in the State.

7 (5) Vermont agriculture has been identified as contributing 40 percent of
8 the phosphorus loading to Lake Champlain. Although 60 percent of
9 phosphorus loading to Lake Champlain comes from other sources, agricultural
10 enterprises account for the largest single source. The other sources of
11 phosphorus loading to Lake Champlain are stream instability at 22 percent,
12 forestlands at 15 percent, developed lands and paved roads at 14 percent,
13 unpaved roads at six percent, and wastewater treatment facilities at three
14 percent.

15 (6) If EPA fails to accept Vermont's water quality implementation plan,
16 much of the responsibility and cost for meeting a new Total Maximum Daily
17 Load plan (TDML) will likely fall on municipalities and their wastewater
18 treatment plants, which contribute only three percent to the phosphorus load in
19 Lake Champlain. More effective leverage points are agricultural runoff and
20 other nonpoint sources, and these should be an integral part of Vermont's water

Gray highlighting = Requested change from Committee

1 quality plan. Addressing agriculture's contribution to the problem will subject
2 Vermont's farmers to additional requirements under the AAPs and other
3 agricultural water quality rules.

4 (7) The Vermont agricultural community recognizes that it has a role to
5 play in continuing efforts to reduce nutrient loading and improve water quality
6 in the State, but additional State and federal assistance is necessary to fulfill
7 this role successfully, including technical and financial assistance to encourage
8 small farms to adopt and implement nutrient management plans.

9 (8) Many drivers impact water quality in the State, including agriculture,
10 storm water management, river channel stability, forest management,
11 watershed and wetland protection and restoration, shoreland management, and
12 internal phosphorus loading. In an effort to understand more fully the
13 interconnections between these drivers and their relative impacts on water
14 quality in the State, a six-month systems mapping process could lead to the
15 identification of key leverage points, which if addressed, could lead to high
16 impact change as required in Vermont's impending TMDL agreement
17 with EPA.

18 (9) Numerous stakeholder organizations have been working for many
19 years to improve water quality in Vermont's watersheds, each in their own
20 way. Given the complexity of the challenge we face in improving water

Gray highlighting = Requested change from Committee

1 quality as well as the complexity of natural systems in general, the General
2 Assembly recognizes that a collaborative approach will be critical to
3 addressing these challenges.

4 (b) Purpose. It is the purpose of this act to:

5 (1) improve the quality of the waters of Vermont;

6 (2) authorize and prioritize proactive measures designed to implement
7 and meet the impending total maximum daily load (TMDL) plan for Lake
8 Champlain, meet impending TMDL plans for other State waters, and improve
9 water quality across the State;

10 (3) identify and prioritize cost-effective strategies for the State to
11 address water quality issues; and

12 (4) engage more municipalities, agricultural operations, businesses, and
13 other interested parties as part of the State's efforts to improve the quality of
14 the waters of the State.

15 (5) provide mechanisms, staffing, and financing necessary for State
16 waters to achieve and maintain compliance with the Vermont water quality
17 standards.

18 Second: By striking out Sec. 3 in its entirety and inserting in lieu thereof
19 the following:

20 Sec. 3. 6 V.S.A. subchapter 5a is added to read:

Gray highlighting = Requested change from Committee

1 (c) Certification due to water quality threat. The Secretary may require any
2 person who owns or operates a farm to submit a small farm certification under
3 this section if the person is not required to obtain a permit or submit a
4 certification under this chapter and the Secretary determines that the farm
5 poses a threat of discharge to a water of the State or presents a threat of
6 contamination to groundwater.

7 (c) Rulemaking; small farm certification. The Secretary of Agriculture,
8 Food and Markets shall adopt by rule requirements for a small farm
9 certification of compliance with the accepted agricultural practices. The rules
10 required by this subsection shall be adopted as part of the accepted agricultural
11 practices under section 4810 of this title.

12 (d) Small farm inspection. The Secretary may inspect a small farm in the
13 State at any time for the purposes of assessing compliance by the small farm
14 with the accepted agricultural practices and determining consistency with a
15 certification of compliance submitted by the person who owns or operates the
16 small farm. The Secretary may prioritize inspections of small farms in the
17 State based on identified water quality issues posed by a small farm.

18 (e) Notice of change of ownership or change of lease. A person who owns
19 or leases a small farm shall notify the Secretary of a change of ownership or
20 change of lessee of a small farm within 30 days of the change. The

Gray highlighting = Requested change from Committee

1 notification shall include the certification of small farm compliance required
2 under subsection (a) of this section.

3 (f)(1) Identification; ranking of water quality needs. During an inspection
4 of a small farm under this section, the Secretary shall identify areas where the
5 farm could benefit from capital, structural, or technical assistance in order to
6 improve or come into compliance with the accepted agricultural practices and
7 any applicable State water quality permit or certification required under this
8 chapter.

9 (2) Notwithstanding the priority system established under section 4823
10 of this title, the Secretary annually shall establish a priority ranking system for
11 small farms according to the water quality benefit associated with the capital,
12 structural, or technical improvements identified as needed by the Secretary
13 during an inspection of the farm.

14 (3) Notwithstanding the priority system established by subdivision (2) of
15 this subsection, the Secretary may provide financial assistance to a small farm
16 at any time, regardless of the priority ranking system, if the Secretary
17 determines that the farm needs assistance to address a water quality issue that
18 requires immediate abatement.

19 (g) Fees. A person required to submit a certification under this section
20 shall submit an annual operating fee of \$250.00 to the Secretary. The fees

Gray highlighting = Requested change from Committee

1 collected under this section shall be deposited in the Agricultural Water
2 Quality Special Fund under section 4803 of this title.

3 Third: By striking out Sec. 4 in its entirety and inserting in lieu thereof the
4 following:

5 Sec. 4. 6 V.S.A. § 4810a is added to read:

6 § 4810a. ACCEPTABLE AGRICULTURAL PRACTICES; REVISION

7 (a) On or before July 1, 2016, the Secretary of Agriculture, Food, and
8 Markets shall amend the accepted agricultural practices in order to improve
9 water quality in the State, assure practices on all farms eliminate adverse
10 impacts to water quality, and implement the small farm certification program
11 required by section 4858a of this title. At a minimum, the amendments to the
12 accepted agricultural practices shall:

13 (1) Specify the number and type of animals housed on a farm that are
14 subject to the small farm certification requirements under section 4871 of this
15 title. The Secretary shall establish the number and type of animals under this
16 subdivision based on the potential impact of the number and type of animals on
17 the quality of the waters of the State.

18 (2) Specify those farms that:

19 (A) are required to comply with the small certification requirements
20 under section 4871 of this title; and

Gray highlighting = Requested change from Committee

1 (B) shall be subject to the accepted agricultural practices, but shall
2 not be required to comply with small farm certification requirements under
3 section 4871 of this title.

4 (3)(A) Prohibit a farm from stacking manure, storing fertilizer, or
5 storing other nutrients on the farm:

6 (i) in a manner and location that presents a threat of discharge to a
7 water of the State or presents a threat of contamination to groundwater; or

8 (ii) on lands in a floodway or otherwise subject to regular
9 flooding.

10 (B) In no case shall manure stacking sites, fertilizer storage, or other
11 nutrient storage be located within 100 feet of a private well or within 100 feet
12 of a water of the State.

13 (4) Require the construction and management of barnyards, waste
14 management systems, animal holding areas, and production areas in a manner
15 to prevent runoff of waste to a surface water, to groundwater, or across
16 property boundaries.

17 (5) Establish standards for nutrient management on farms, including
18 required nutrient management planning on all farms that manage agricultural
19 wastes.

Gray highlighting = Requested change from Committee

1 (6) Require cropland on the farm to be cultivated in a manner that
2 results in an average soil loss of less than or equal to the soil loss tolerance for
3 the prevalent soil, known as 1T, as calculated through application of the
4 Revised Universal Soil Loss Equation, or through the application of similarly
5 accepted models.

6 (7) Require a farm to comply with standards established by the
7 Secretary for maintaining a vegetative buffer zone of perennial vegetation
8 between annual croplands and the top of the bank of an adjoining water of the
9 State. At a minimum the vegetative buffer standards established by the
10 Secretary shall prohibit the application of manure on the farm within 25 feet of
11 the top of the bank of an adjoining water of the State or within 10 feet of a
12 ditch.

13 (8) Prohibit the construction or siting of a farm structure for the storage
14 of manure, fertilizer, or pesticide storage within a floodway area identified on a
15 National Flood Insurance Program Map on file with a town clerk.

16 (9) Regulate, in a manner consistent with the Agency of Natural
17 Resources' flood hazard area and river corridor rules, the construction or siting
18 of a farm structure or the storage of manure, fertilizer, or pesticides storage
19 within a river corridor designated by the Secretary of Natural Resources.

Gray highlighting = Requested change from Committee

1 (10) Establish standards for the exclusion of livestock from the waters of
2 the State to prevent erosion and adverse water quality impacts.

3 (11) Establish standards for the management of subsurface agriculture
4 tile drainage consistent with subsection (b) of this section.

5 (b) On or before January 15, 2018, the Secretary of Agriculture, Food and
6 Markets shall amend the accepted agricultural practices in order to include
7 requirements for reducing nutrient contribution to waters of the State from
8 subsurface tile drainage. Upon adoption of requirements for subsurface tile
9 drainage, the Secretary may require an existing subsurface tile drain to comply
10 with the requirements of the AAPs for subsurface tile drainage upon a
11 determination that compliance is necessary to reduce adverse impacts to water
12 quality from the subsurface tile drain.

13 Fourth: By striking out Sec. 11 in its entirety and inserting in lieu thereof
14 the following:

15 Sec. 11. 6 V.S.A. § 366 is amended to read:

16 § 366. TONNAGE FEES

17 (a) There shall be paid annually to the ~~secretary~~ Secretary for all fertilizers
18 distributed to a nonregistrant consumer in this ~~state~~ State an annual ~~inspection~~
19 fee at a rate of \$0.25 cents per ton.

Gray highlighting = Requested change from Committee

1 (b) Persons distributing fertilizer shall report annually by January 15 for the
2 previous year ending December 31 to the ~~secretary~~ Secretary revealing the
3 amounts of each grade of fertilizer and the form in which the fertilizer was
4 distributed within this ~~state~~ State. Each report shall be accompanied with
5 payment and written permission allowing the ~~secretary~~ Secretary to examine
6 the person's books for the purpose of verifying tonnage reports.

7 (c) No information concerning tonnage sales furnished to the ~~secretary~~
8 Secretary under this section shall be disclosed in such a way as to divulge the
9 details of the business operation to any person unless it is necessary for the
10 enforcement of the provisions of this chapter.

11 (d) ~~A \$50.00 minimum tonnage fee shall be assessed on all distributors~~
12 ~~who distribute fertilizers in this state.~~ [Repealed.]

13 (e) Agricultural limes, including agricultural lime mixed with wood ash,
14 are exempt from the tonnage fees required in this section.

15 (f) Lime and wood ash mixtures may be registered as agricultural liming
16 materials and guaranteed for potassium or potash provided that the wood ash
17 totals less than 50 percent of the mixture.

18 (g) All fees collected under subsection (a) of this section shall be deposited
19 in the revolving fund created by section 364(e) of this title and used in
20 accordance with its provisions.

Gray highlighting = Requested change from Committee

1 (h) There shall be paid annually to the Secretary for all fertilizers
2 distributed to a nonregistrant consumer in this State an annual fee at a rate of
3 \$15.00 per ton for the purpose of supporting agricultural water quality
4 programs in Vermont.

5 (1) Persons distributing fertilizer shall report annually on or before
6 January 15 for the previous year ending December 31 to the Secretary
7 revealing the amounts of each grade of fertilizer and the form in which the
8 fertilizer was distributed within this State. Each report shall be accompanied
9 with payment and written permission allowing the Secretary to examine the
10 person's books for the purpose of verifying tonnage reports.

11 (2) No information concerning tonnage sales furnished to the Secretary
12 under this section shall be disclosed in such a way as to divulge the details of
13 the business operation to any person unless it is necessary for the enforcement
14 of the provisions of this chapter.

15 (3) A \$150.00 minimum tonnage fee shall be assessed on all distributors
16 who distribute fertilizers in this State.

17 (4) Agricultural limes, including agricultural lime mixed with wood ash,
18 are exempt from the tonnage fees required under this subsection.

Gray highlighting = Requested change from Committee

1 (5) All fees collected under this subsection shall be deposited in the
2 Agricultural Water Quality Special Fund created under section 4803 of this
3 title.

4 Fifth: By striking out Sec. 13 in its entirety and inserting in lieu thereof the
5 following:

6 Sec. 13. 6 V.S.A. § 4810 is amended to read:

7 § 4810. AUTHORITY; COOPERATION; COORDINATION

8 (a) Agricultural land use practices. In accordance with 10 V.S.A.
9 § 1259(i), the ~~secretary~~ Secretary shall adopt by rule, pursuant to 3 V.S.A.
10 chapter 25 of ~~Title 3~~, and shall implement and enforce agricultural land use
11 practices in order to ~~reduce the amount of agricultural pollutants entering the~~
12 ~~waters of the state~~ satisfy the requirements of 33 U.S.C. § 1329 that the State
13 identify and manage nonpoint sources of agricultural waste to waters of the
14 State. These agricultural land use practices shall be created in two categories,
15 pursuant to ~~subdivisions (1) and (2) of this subsection~~ subsections (b) and (c)
16 of this section.

17 ~~(1)(b)~~ Accepted Agricultural Practices. “Accepted Agricultural
18 Practices” (AAPs) shall be management standards to be followed ~~in~~
19 ~~conducting agricultural activities by all persons engaged in farming in this state~~
20 State. These standards shall address activities which have a potential for

Gray highlighting = Requested change from Committee

1 causing pollutants to enter the groundwater and waters of the ~~state~~ State,
2 including dairy and other livestock operations plus all forms of crop and
3 nursery operations and on-farm or agricultural fairground, registered pursuant
4 to 20 V.S.A. § 3902, livestock and poultry slaughter and processing activities.
5 The AAPs shall include, as well as promote and encourage, practices for
6 farmers in preventing pollutants from entering the groundwater and waters of
7 the ~~state~~ State when engaged in, ~~but not limited to~~, animal waste management
8 and disposal, soil amendment applications, plant fertilization, and pest and
9 weed control. Persons engaged in farming, ~~as defined in 10 V.S.A. § 6001~~,
10 who ~~follow~~ are in compliance with these practices shall be presumed to be in
11 compliance with water quality standards. AAPs shall be practical and ~~cost~~
12 ~~effective~~ cost-effective to implement, as determined by the Secretary. Where
13 the Secretary determines, after inspection of a farm, that a person engaged in
14 farming is complying with the AAPs but is not complying with the
15 requirements of the State water quality standards, the Secretary shall require
16 the person to implement additional, site-specific conservation practices
17 designed to meet the State water quality standards. When requiring
18 implementation of a conservation practice under this subsection, the Secretary
19 shall inform the person engaged in farming of the resources available to assist
20 the person in implementing the conservation practice and complying with the

Gray highlighting = Requested change from Committee

1 requirements of this chapter. The AAPs for groundwater shall include a
2 process under which the ~~agency~~ Agency shall receive, investigate, and respond
3 to a complaint that a farm has contaminated the drinking water or groundwater
4 of a property owner.

5 ~~(2)(c)~~ (c) Best Management Practices. ~~“Best Management Practices”~~
6 ~~(BMPs) may be required by the secretary on a case by case basis. Before~~
7 ~~requiring BMPs, the secretary shall determine that sufficient financial~~
8 ~~assistance is available to assist farmers in achieving compliance with~~
9 ~~applicable BMPs.~~ Best management practices (BMPs) are site-specific
10 on-farm conservation practices implemented in order to address water quality
11 problems and in order to achieve compliance with the requirements of this
12 chapter or State water quality standards. The Secretary may require any person
13 engaged in farming to implement a BMP. When requiring implementation of a
14 BMP, the Secretary shall inform a person engaged in farming of the resources
15 available to assist the person in implementing BMPs and complying with the
16 requirements of this chapter. BMPs shall be practical and cost effective to
17 implement, as determined by the Secretary, and shall be designed to achieve
18 compliance with the requirements of this chapter.

19 ~~(b)(d)~~ (d) Cooperation and coordination. ~~The secretary of agriculture, food~~
20 ~~and markets~~ Secretary of Agriculture, Food and Markets shall coordinate with

Gray highlighting = Requested change from Committee

1 ~~the secretary of natural resources~~ Secretary of Natural Resources in
2 implementing and enforcing programs, plans, and practices developed for
3 reducing and eliminating agricultural non-point source pollutants and
4 discharges from concentrated animal feeding operations. The ~~secretary of~~
5 ~~agriculture, food and markets~~ Secretary of Agriculture, Food and Markets and
6 ~~the secretary of natural resources~~ Secretary of Natural Resources shall develop
7 a memorandum of understanding for the non-point program describing
8 program administration, grant negotiation, grant sharing, and how they will
9 coordinate watershed planning activities to comply with Public Law 92-500.
10 The ~~secretary of agriculture, food and markets~~ Secretary of Agriculture, Food
11 and Markets and the ~~secretary of the agency of natural resources~~ Secretary of
12 Natural Resources shall also develop a memorandum of understanding
13 according to the public notice and comment process of 10 V.S.A. § 1259(i)
14 regarding the implementation of the federal concentrated animal feeding
15 operation program and the relationship between the requirements of the federal
16 program and the ~~state~~ State agricultural water quality requirements for large,
17 medium, and small farms under this chapter ~~215 of this title~~. The
18 memorandum of understanding shall describe program administration, permit
19 issuance, an appellate process, and enforcement authority and implementation.
20 The memorandum of understanding shall be consistent with the federal

Gray highlighting = Requested change from Committee

1 National Pollutant Discharge Elimination System permit regulations for
2 discharges from concentrated animal feeding operations. The allocation of
3 duties under this chapter between the ~~secretary of agriculture, food and~~
4 ~~markets~~ Secretary of Agriculture, Food and Markets and the ~~secretary of~~
5 ~~natural resources~~ Secretary of Natural Resources shall be consistent with the
6 ~~secretary's~~ Secretary's duties, established under the provisions of 10 V.S.A. §
7 1258(b), to comply with Public Law 92-500. The ~~secretary of natural~~
8 ~~resources~~ Secretary of Natural Resources shall be the ~~state~~ State lead person in
9 applying for federal funds under Public Law 92-500, but shall consult with the
10 ~~secretary of agriculture, food and markets~~ Secretary of Agriculture, Food and
11 Markets during the process. The agricultural non-point source program may
12 compete with other programs for competitive watershed projects funded from
13 federal funds. The ~~secretary of agriculture, food and markets~~ Secretary of
14 Agriculture, Food and Markets shall be represented in reviewing these projects
15 for funding. Actions by the ~~secretary of agriculture, food and markets~~
16 Secretary of Agriculture, Food and Markets under this chapter concerning
17 agricultural non-point source pollution shall be consistent with the water
18 quality standards and water pollution control requirements of 10 V.S.A.
19 ~~chapter 47 of Title 10~~ and the federal Clean Water Act as amended. In
20 addition, the ~~secretary of agriculture, food and markets~~ Secretary of

Gray highlighting = Requested change from Committee

1 Agriculture, Food and Markets shall coordinate with the ~~secretary of natural~~
2 ~~resources~~ Secretary of Natural Resources in implementing and enforcing
3 programs, plans, and practices developed for the proper management of
4 composting facilities when those facilities are located on a farm.

5 Sixth: In Sec. 15, 6 V.S.A. § 4981, in subdivision (b)(3), after
6 “land-applied manure, nutrients,” and before “or sludge to waters of the State”
7 by inserting “septage,”

8 Seventh: In Sec. 17, by striking out 6 V.S.A. § 4991 in its entirety and
9 inserting in lieu thereof the following:

10 § 4991. PURPOSE

11 The purpose of this subchapter is to provide the Secretary of Agriculture,
12 Food and Markets with the necessary authority to enforce the agricultural
13 water quality requirements of this chapter. When the Secretary of Agriculture,
14 Food and Markets determines that a person subject to the requirements of the
15 chapter is violating a requirement of this chapter, the Secretary shall respond to
16 and require discontinuance of the violation. The Secretary may respond to a
17 violation of the requirements of this chapter by:

18 (1) consulting with a farmer or pursuing other nonregulatory action
19 within the authority of the Secretary to assure discontinuance of the violation
20 and remediation of any harm caused by the violation;

Gray highlighting = Requested change from Committee

1 (2) issuing a corrective action order under section 4992 of this title;

2 (3) issuing a cease and desist order under section 4993 of this title;

3 (4) issuing an emergency order under section 4993 of this title;

4 (5) revoking or conditioning coverage under a permit or certification
5 under section 4994 of this title;

6 (6) bringing a civil enforcement action under section 4995 of
7 this title; or

8 (7) referring the violation to the Secretary of Natural Resources for
9 enforcement under 10 V.S.A. chapter 201.

10 and in 6 V.S.A. § 4993, by striking out subdivision (a)(2) in its entirety and
11 inserting in lieu thereof the following:

12 (2) Issue emergency administrative orders to protect water quality when
13 an alleged violation, activity, or farm practice:

14 (A) presents or is likely to result in an immediate threat of substantial
15 harm to the environment or immediate threat to the public health or welfare; or

16 (B) requires a permit or amendment to a permit issued under this
17 chapter and a farm owner or operator has commenced an activity or is
18 continuing an activity without a permit or permit amendment.

Gray highlighting = Requested change from Committee

1 Eighth: By striking out Secs. 22–24 (AAPs as condition of use value
2 appraisal) in their entirety and inserting [Omitted] in lieu thereof for each
3 section.

4

5

6 (Committee vote: _____)

7

8

Representative _____

9

FOR THE COMMITTEE